

Telesaurus JV  
Telesaurus VPC LLC  
AMTS Consortium LLC  
Telesaurus Holdings GB LLC  
Intelligent Transportation & Monitoring Wireless LLC



[www.telesaurus.com](http://www.telesaurus.com)

Nationwide spectrum & solutions for ITS & environment

Berkeley California

*Ex parte presentation*  
Electronic submission

May 29, 2007

Marlene Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20054

Re: WT 06-49, LMS-M NPRM:  
[Response to Progeny's letter of May 16, 2007](#)

This will be filed on ECFS. A copy will be emailed to FCC staff including Paul D'Ari and Julius Knapp, and to Progeny counsel.

This responds to the letter from Progeny<sup>1</sup> dated May 16, 2007 ("Progeny Letter")<sup>2</sup> filed in this docket that responds to the May 7, 2007 ex parte presentations by Telesaurus Holdings GB LLC ("Telesaurus") ("Telesaurus Filing").

Central to this proceeding, commenced and sustained only due to Progeny's request (RM-10403) and opposed by all other major interests in 902-928 MHz, is whether Progeny has a *foundation and standing: valid LMS-M licenses*. That is the subject of the Telesaurus Filing.

The Telesaurus Filing provides clear evidence-- including a verified court complaint signed by the alleged sole owner of Progeny (Otto Frenzel), official records received directly from the State of Indiana, and SEC filings signed by Mr. Frenzel-- that demonstrate clear violations of specific Commission requirements to apply for, participate in, and receive license awards from, the LMS-M auction, and which leads to invalidation of the Progeny auction participation and Licenses under Commission and DC Circuit Court decision holdings (which are unanimous on these matters).

The Progeny Letter does not deny any said specific evidence presented, or the legal arguments and conclusions made thereupon, and thus should be seen as admissions.

---

<sup>1</sup> Progeny LMS LLC, an Indiana LLC, which holds LMS-M licenses.

<sup>2</sup> The Progeny Letter, as with past filings that allege to be authorized by and for Progeny (see the Telesaurus Filing), did not state the authority of the signer to speak for Progeny. That could indicate that Progeny wants to keep its options open to disclaim such statements.

The Progeny Letter, instead, ambiguously states that the “issues” raised in the Telesaurus Filings were “addressed and closed” by the Commission in 1999 and that the Commission was “fully aware of the relevant facts.”

Assuming this language means to allege that (i) the evidence and arguments in Telesaurus Fling were not accurate, and (ii) but were known by the Commission when processing and granting the Progeny licenses, then *such allegations are false and known to be false by Progeny, its owner, and Progeny’s legal counsel.*

Prior to submitting the Telesaurus Filing, Telesaurus obtained: (i) via an FOIA request to the FCC, the entire FCC files relating to the Progeny licenses including the auction applications resulting in said licenses (which were not by submitted Progeny: Progeny did not exist until after the auction), (ii) the full files of the litigation in Indiana that related to said auction application and eventual grant of the licenses, including the above-noted verified complaint of Mr. Frenzel, (iii) files from the State of Indiana regarding Progeny including the commencement of its existence, (iv) SEC filings of affiliates (as defined in FCC auction rules) of Mr. Frenzel including those signed by Mr. Frenzel as a Director.

The Telesaurus Filing provided direct evidence from these official, public, verified records. These demonstrate what the Telesaurus Filing stated, including: (1) Progeny *did not exist* until after the auction, and this was *at all times withheld* from the FCC and violated multiple FCC requirements, and (2) the alleged sole owner of Progeny, Mr. Frenzel, had (and continues to this day to have) multiple affiliates whose attributable gross revenues entirely disqualified him and Progeny from the 35% bidding credit used in the auction and that resulted in closing high bids, and this also was *at all times withheld* from the FCC.<sup>3/4</sup>

The Progeny letter footnotes certain Pubic Notices. As indicated above, there is *nothing* in the FCC files regarding the Progeny licenses, including related Public Notices, that show that the information documented in the Telesaurus Filing (and repeated in summary form in the preceding paragraph), which demonstrates multiple major violations of FCC auction and licensing requirements, *was disclosed to the FCC as required, or otherwise known to the FCC.*

---

<sup>3</sup> Language in the verified court complaint of Progeny’s owner included in the Telesaurus Filing addresses why said owner and his counsel needed to withhold this information: so it could eventually obtain a grant of the licenses and avoid disqualification. Other documents listed above provide additional support.

<sup>4</sup> Progeny cannot, as it attempts in the Progeny Letter, shift the blame to the FCC for Progeny’s failures to comply with rules and failure to disclose, nor does the fact that the FCC placed the Progeny auction matter on Public Notice shift the burden to the public to catch said violations. The FCC has broad powers to review at any time, upon request or on its own motion, potential rule violations, lack of candor, and past licensing actions, and then take appropriate corrective action. Also, as indicated in *United States ex rel. Taylor v. Gabelli, et al.*, No. 03 Civ. 8762 (S.D.N.Y.) (and public comments thereupon by the FCC and US DOJ), the US and the FCC have interests in the integrity of FCC auction processes, and the FCC relies upon accurate and candid disclosures by auction applicants and rule compliance. The Progeny actions described in the Telesaurus Filing are not “closed” as Progeny asserts.

Said violations disqualify the licenses under specific applicable law (see the Telesaurus Filing), and said failures to disclose, initially and on ongoing basis,<sup>5</sup> call into question Progeny's owner's character and fitness to hold licenses, and its counsels' qualification to practice law including before the Commission. The Progeny Letter is a *further action to withhold* such information: while it did not (since it cannot credibly) deny the specific facts and applicable law presented, it falsely stated that the FCC was aware of them.

Unable to refute the Telesaurus Filing, the Progeny Letter attempts to divert FCC staff attention by suggesting that Telesaurus is trying to "divert" this proceeding and "cloud the record" in "last minute activities."<sup>6</sup>

However, in this 902-928 MHz band, it is Progeny and its counsel that are diverting, clouding, and the like: from unlawful obtaining and warehousing LMS-M, to RM-10403 and this NPRM based on Progeny's *unsupported, untested, and clearly false assertions* that LMS-M—the wide-area ITS radio service entirely needed and feasible in the nation<sup>7</sup>—will fail, and that LMS-M should be changed to CMRS *that is inappropriate for a shared band, is contrary to spectrum efficiency and utilization, and will undermine the ITS dedication, purpose, and capability of LMS-M.*<sup>8</sup>

In contrast, Telesaurus, utilities, railroads, Part 15 vendors and users, technology standards bodies, Sprint, and others—all are clear as to their uses of the band, and in agreement that the current rules are well designed and balanced, and must not be "diverted" "clouded" and derailed by Progeny.

Respectfully,



Warren Havens, President  
Telesaurus Holdings GB LLC

---

<sup>5</sup> Besides violation by initial failure to disclose in the short and long forms, further violation was caused and continues by the requirements of other FCC rule sections including §§ 1.65, 1.2114, and 1.2110(n).

<sup>6</sup> After its waves of major presentations this year, often with new materials, Progeny now wants others to be shut down--to have the proceeding in its "last minutes"--to avoid dealing with evidence in the Telesaurus Filing, in the ITS America filing, and in other filings, that Progeny cannot credibly contest.

<sup>7</sup> See the filing in this docket by the Intelligent Transportation Society of America filed on or about May 10, 2007. See also the Telesaurus website at [www.telesaurus.com](http://www.telesaurus.com) and the scores of URL links given therein to sites of governmental bodies and other authorities regarding ITS including ITS location and communications.

<sup>8</sup> Clearly, a shared band is not the place for a CMRS as Progeny is trying to finagle out of the Commission: the Commission properly disposed of that question in the LMS rulemaking last decade. There, the Commission also properly found (as Telesaurus further demonstrates in its previous filings in this NPRM), that ITS wide-area wireless (a PMRS) is compatible in *time and space, and in QoS*, with Part 15 uses, and is of high public interest warranting its allocation in this band. CMRS, based on real-time QoS, and high capacity in close quarters (to portable devices), requires consistent domination over co-channel use. That is apparently behind Progeny's proposals to reduce protection of Part 15. (Progeny may accept lower power, but only if it can dominate over Part 15.) This will not allow wide-area ITS wireless and thus not be acceptable to Telesaurus, nor be fair or acceptable to Part 15 users either.

